

1 THE WITNESS: Would you repeat the question?

2 MS. HIGHTMAN:

3 Q. Yes. Would you agree that the
4 Commission should insure that any compensation
5 mechanism it approves in this proceeding compensates
6 Focal for the costs it incurs in transporting and
7 delivering traffic to the internet?

8 A. I would agree that the Commission should
9 insure that in this context that Ameritech should --
10 or, I'm sorry, Focal should be compensated for the
11 costs that Ameritech puts on their network.

12 Q. I don't think you have answered my
13 question so let me try it again.

14 A. Okay.

15 Q. Isn't the issue, Issue 2 here, which is
16 the issue you are addressing, relates to the
17 intercarrier compensation mechanism for the transport
18 and delivery of internet-bound calls, right?

19 A. I think that's fair, yes.

20 Q. And isn't it correct to state that it's
21 your position in this case that Ameritech should pay
22 something and you propose an amount?

1 A. Yes.

2 Q. For that, for Focal performing those
3 functions for calls originating on Ameritech's
4 network and delivered to an internet service provider
5 that's a Focal customer?

6 A. I propose that.

7 Q. And isn't it correct to state that it
8 would be appropriate that the Commission should
9 ensure that, when it sets that rate, the rate should
10 compensate Focal for the costs that Focal incurs for
11 delivering, transporting and delivering to Focal's
12 internet service provider customer calls that
13 originate on Ameritech's network?

14 MR. HARVEY: I would have to object. That
15 seemed to me to be pretty compound. I think that the
16 substance of it is not objectionable in any way but
17 that could be about three questions.

18 MS. HIGHTMAN: I really think it was one
19 question.

20 EXAMINER WOODS: Do you understand the
21 question, Mr. Phipps?

22 THE WITNESS: If she could repeat it, I

1 would like that.

2 EXAMINER WOODS: Try it again.

3 MS. HIGHTMAN:

4 Q. Wouldn't you agree that the compensation
5 level the Commission sets in this case should
6 compensate Focal for the costs Focal incurs
7 transporting and delivering traffic to internet
8 service providers on its network that were originated
9 on Ameritech's network by Ameritech's local
10 customers?

11 A. Well, I would agree that Focal should be
12 compensated for the costs that originate on
13 Ameritech's network and incurred by Focal in routing
14 that traffic to ISP customers.

15 Q. So your answer is yes? I am not sure if
16 you are differing with me and I need to understand
17 that so I can see if I should ask you any further
18 questions.

19 A. Well, I think you say transport and
20 termination, and I think my rate is indicative of the
21 costs that Focal incurs.

22 Q. I didn't ask you anything about the rate

1 that you are proposing. I am asking you about the
2 rate the Commission should set. And let me ask you
3 again; it's a very simple question. Would you agree
4 that the Commission should set a rate that
5 compensates Focal for any costs that it incurs
6 transporting and delivering to its internet service
7 provider customers calls that originate on
8 Ameritech's network?

9 A. I would agree with that.

10 Q. And you would also agree with me,
11 wouldn't you, that any compensation mechanism that
12 fails to do so would require Focal to bear these
13 costs, by definition?

14 MR. FRIEDMAN: I will object to the question
15 as argumentative for the exact reason that counsel
16 has stated.

17 MS. HIGHTMAN: It's not argumentative. It's
18 a conclusion drawn from the prior answer.

19 EXAMINER WOODS: Frankly, and I guess it's
20 my chance to not want to quibble here, I think Focal
21 always bears the costs that it bears. I think the
22 real question is whether or not they recover the

1 costs. Whatever costs they bear, they bear. If the
2 rate is not set, the question is would they then not
3 recover those costs.

4 MS. HIGHTMAN: Can you answer that question?

5 THE WITNESS: Well, I would say if
6 Ameritech -- if Focal incurs costs originating on
7 Ameritech's network that are not compensated, then I
8 would say, yes, that Focal would bear those costs.
9 If they choose to bear those costs. I mean, if they
10 don't recover those costs in another way.

11 MS. HIGHTMAN:

12 Q. In what other way are you referring to?

13 A. Whatever way they choose.

14 Q. Well, sitting here today what other way
15 do you know of that would enable them to recover the
16 costs?

17 A. I'm not aware of any personally.

18 Q. In fact, currently they can not recover
19 those costs from the ISPs, can they?

20 A. Not in access charges.

21 Q. And they can't recover those costs from
22 ISPs through intrastate charges either, can they?

1 A. Well, it depends on what costs you are
2 talking about.

3 Q. We have been talking about the same
4 costs in this whole series of questions.

5 A. If you are talking about reciprocal
6 compensation costs, no.

7 Q. So they can't recover them from the
8 ISPs. So where else would they recover them?

9 A. I guess they would be borne by Focal.

10 Q. Thank you. At page 10 of your verified
11 statement you state that the FCC has distinguished
12 between ISP traffic and local traffic at line 188?

13 A. Yes.

14 Q. The FCC has not reached any conclusion
15 regarding any functional difference between calls
16 delivered to the internet and local traffic, right?

17 A. When you say functional, I don't think I
18 know exactly what you are talking about.

19 Q. Would you agree with me that
20 functionally, the way a call is routed, whether it's
21 a call to an internet service provider, a local call,
22 well, it's delivered to an internet service provider

1 versus, for example, a call delivered to a corporate
2 LAN, a local call made to a corporate LAN, there is
3 functionally no difference between those two calls,
4 right?

5 A. Well, I believe they do make that
6 distinction that a call to an ISP is routed to a
7 foreign web site as opposed to a local call which is
8 actually terminated at the switch.

9 Q. With respect to delivering the call to
10 the internet service provider, they don't -- the FCC
11 does not make any distinction functionally between
12 the call to the internet service provider versus a
13 regular local call, isn't that right?

14 A. Well, I believe I just answered the
15 question in that they have made a distinction between
16 those two.

17 Q. I am asking you a different question.

18 A. Okay.

19 Q. You described what happens after the
20 call is delivered to the ISP and where it goes from
21 there, right?

22 A. Yes.

1 Q. And that's the distinction the FCC drew
2 when it reached its interstate jurisdictional
3 determination, right?

4 A. Uh-huh.

5 Q. My question for you is different. My
6 question is the FCC did not identify any functional
7 difference between a local call and a call delivered
8 to the internet service provider before it's passed
9 onto the internet, right?

10 A. If you qualify that with "before it's
11 passed onto the internet," I'm not aware of any
12 distinction.

13 Q. You have prepared no cost study to
14 determine the actual costs associated with transport
15 and delivery of internet-bound calls, isn't that
16 right?

17 A. No.

18 Q. That's not right?

19 A. Oh, I'm sorry, no, I have not prepared a
20 cost study.

21 Q. And you have merely adjusted one output
22 of Ameritech's cost study that measures costs

1 associated with all local traffic in coming up with
2 your proposal, isn't that right?

3 A. Yes.

4 Q. Your adjusted end office rate that you
5 are proposing in this case reflects only one
6 difference between calls delivered to the internet
7 and non-internet local calls, isn't that right?

8 A. Yes, I believe that's right.

9 Q. The length of the call?

10 A. The duration of the call.

11 Q. Your adjusted rate which you are
12 proposing in this case reflects no other differences
13 between those two types of calls, the two types being
14 local calls and calls delivered to the internet,
15 right?

16 A. I don't believe so, no.

17 Q. It is not your position, however, is it,
18 that there are no other differences between calls
19 delivered to the internet and local calls that might
20 impact the cost of transporting and delivering those
21 calls?

22 A. Well, I think as I state in my verified

1 statement, that if the actual cost models were
2 examined that initially were used to determine those
3 rates, that some marginal improvements might be
4 possible.

5 Q. Well, I wanted to ask you about your
6 marginal differences. You have not attempted to
7 quantify what the impact of any of those differences
8 is, right?

9 A. No, I haven't.

10 Q. So, since you haven't quantified them,
11 you don't know sitting here today whether the
12 differences would be marginal or more than marginal,
13 right?

14 A. Well, based on the possible differences
15 that were identified by Mr. Starkey in his testimony,
16 I think they would be marginal, but, no, I haven't
17 quantified that.

18 Q. And you have not attempted to identify
19 an exhaustive list of all the differences that would
20 be relevant were you to do a cost study of the cost
21 of traffic delivered to the internet, right?

22 A. No.

1 Q. So you couldn't know sitting here today,
2 could you, what the difference would be
3 quantitatively from what you are working with here in
4 this case?

5 A. I couldn't know that.

6 Q. Would you agree that to the extent that
7 -- actually, let me back up a second and give you a
8 foundational question. We are using in this case
9 Ameritech's cost studies to come up with the
10 compensation mechanism for NXX, right?

11 A. Yes.

12 Q. To the extent that Ameritech's cost
13 studies assume a less expensive switch and trunk
14 compensation than Focal actually uses, you would
15 agree, wouldn't you, that the reciprocal compensation
16 rate used by Focal would under recover its costs?

17 A. I think there is other factors that
18 would need to be examined to determine. But based on
19 those two factors alone, I think that could be a fair
20 characterization.

21 Q. And you have not attempted to determine
22 the cost or the types of switch and trunk

1 concentration that Focal uses for purposes of
2 determining the appropriate level of the intercarrier
3 compensation, right?

4 A. I'm sorry, could you repeat that
5 question?

6 Q. You have not attempted to identify and
7 cost out the switch and trunk concentration that is
8 actually used by Focal for purposes of coming up with
9 your proposal?

10 A. Well, I don't believe that there is any
11 costs available to do that.

12 Q. But you haven't looked at any costs?

13 A. No, I haven't.

14 Q. Are you familiar with the Ameritech cost
15 model that was used to develop the cost information
16 you present?

17 A. Generally.

18 Q. Would you agree that Ameritech's cost
19 model provides cost information relevant to traffic
20 in an average day?

21 A. Well, when you are talking about the
22 cost model, are you talking about the SCIS or the

1 NCAT?

2 Q. NCAT, I'm sorry.

3 A. I think that's a fair characterization,
4 yes.

5 Q. And this model, N-C-A-T all caps, does
6 not provide any information specific to traffic at a
7 given point in time within a day, right?

8 A. I don't believe so.

9 Q. It doesn't?

10 A. Not to my knowledge.

11 Q. I can't tell if you disagree with me or
12 agree with me.

13 MR. HARVEY: The witnesses are well brought
14 up, Carrie.

15 MS. HIGHTMAN: I don't know if that's a good
16 thing or a bad thing to not be clear.

17 Q. The model does not measure the
18 impact of traffic occurring during the busy hour of a
19 particular day either, does it?

20 A. Not in the NCAT, no.

21 Q. And neither does the NCAT model show how
22 the costs vary as the busy hour varies, right?

1 A. I don't believe so, no.

2 Q. You would agree with me, would you not,
3 that certain types of traffic occur during certain
4 times of day?

5 A. Generally, yes.

6 Q. Are you familiar with the extent to
7 which ISP traffic has shifted the busy hour?

8 A. I'm not aware to the extent, no.

9 Q. At page 12 of your testimony you talk
10 about the loops, long loops. Actually, I think you
11 do it throughout your testimony. But that's one
12 place where it occurs.

13 A. Okay.

14 Q. And I want to ask you some questions
15 about your terminology.

16 A. Okay.

17 Q. Isn't the term "loop" defined in the
18 First Report and Order, by rule of the FCC?

19 A. Could you point me to a specific --

20 Q. Well, are you generally -- you use this
21 term --

22 A. I believe it is, yes.

1 Q. And would it be correct to state -- and
2 if you don't know the answer to this, would you tell
3 me -- that generally a loop extends from the main
4 distribution frame to the network interface device at
5 the customer's premises?

6 A. I think that's a fair characterization
7 of a loop for voice traffic, yes.

8 Q. Now, are you familiar with Paragraph
9 1090 of the First Report and Order?

10 A. I have read it.

11 Q. And can you -- isn't it correct that
12 Paragraph 1090 is the paragraph in which the FCC
13 discusses how a competitive carrier can establish its
14 entitlement to the tandem rate for transport and
15 terminating a local call generally?

16 A. Yes.

17 Q. Now, nowhere in Paragraph 1090 of the
18 First Report and Order did the FCC use the term loop
19 when it discussed a CLEC's entitlement to the tandem
20 rate for reciprocal compensation, isn't that correct?
21 And I can show you a copy -- oh, you have got it
22 there?

1 A. I have it here. I don't see the word
2 "loop."

3 Q. Wouldn't you agree that a fiber ring is
4 unlikely to extend from a main distribution frame to
5 a customer's premises?

6 MR. HARVEY: I will have to object to that.
7 I don't know whether he -- he certainly hasn't
8 expressed a whole lot of background here as an
9 engineer. It's not clear to me that he would know
10 necessarily what a specific, or generally, how that
11 technology would work. And I don't think there is a
12 foundation for it.

13 EXAMINER WOODS: If that's the case, that's
14 the way he should answer.

15 MS. HIGHTMAN: And I would be interested to
16 know that.

17 Q. Do you remember the question?

18 A. Yes, and I am not aware of how a fiber
19 ring is connected to distribution.

20 Q. But you would agree, wouldn't you, that
21 in the FCC's Paragraph 1090 it makes reference to
22 fiber rings as one of the technologies that can

1 perform functions similar to the functions performed
2 by an ILEC's tandem switch?

3 MR. HARVEY: Again, I object. That
4 particular regulatory paragraph says what it says.
5 He can agree that it does or it doesn't but it's not
6 probative of anything.

7 MR. FRIEDMAN: If I may, I would like --
8 well, go ahead and answer his objection.

9 MS. HIGHTMAN: I would rather address them
10 all at a time.

11 MR. FRIEDMAN: My objection is as follows
12 and that is that the question is irrelevant for the
13 following reasons: Although it was once in dispute,
14 this is no longer in dispute. Paragraph 1090 of the
15 First Report and Order bears on the subject -- it is
16 discussion underlying the rule, and the Rule 51.711,
17 implementing Section 251(b)5 of the 1996 Act
18 concerning reciprocal compensation. If the FCC has
19 made anything loud and clear, it is that that section
20 of the statute and the rules under it, the FCC said
21 in its declaratory ruling, are rules in Part H and
22 that includes 51.711 and the underlying discussion

1 including Paragraph 1090, do not apply to internet
2 traffic. So it really makes no difference for
3 purposes of Issue 2 what Rule 1090 says. It is
4 certainly pertinent to Issue 1. And so the objection
5 is it really is irrelevant.

6 MS. HIGHTMAN: Then I think we need to be
7 striking major portions of Mr. Phipps' testimony. He
8 cites Paragraph 1090 in his testimony. He refers to
9 Paragraph 1090. Putting aside that I actually believe
10 it's extremely relevant to this case and to Focal's
11 position in this case. If in fact Mr. Friedman is
12 right, then I think we should just start cutting out
13 major portions of Mr. Friedman's testimony right now.

14 MR. HARVEY: My only objection is that what
15 he has to say about what the rule says is not --

16 MS. HIGHTMAN: He quotes the paragraph. I
17 am asking him about the paragraph. I am entitled to
18 do that.

19 EXAMINER WOODS: And I am troubled, as I
20 always am, when attorneys ask witnesses what
21 something says. Now, it says what it says. If you
22 want to ask him if what it says impacts his opinion,

1 I think that's fine. But I am always troubled when
2 people just ask people to read something into the
3 record or to parrot back what a statute or rule says.
4 It obviously does say that. He would be hard pressed
5 to disagree with you that it says that. But just
6 asking him whether it says that, I would agree with
7 Mr. Harvey, does nothing to advance the issue.

8 If you want to ask him what the impact
9 of that is, you can point him to that, ask him to
10 agree with you that it says that, and then ask him a
11 question as to whether or not that impacts his
12 opinion. But I am always troubled by just asking a
13 witness whether words appear on a written page. I
14 just don't think it advances the subject.

15 MS. HIGHTMAN: Well, considering it's his
16 written page, I think that's why I am asking it. I
17 mean, I will hold on. It's not worth debating this
18 issue. We've definitely debated it enough over the
19 past few days. And I also don't think this rule has
20 been applied evenly throughout but that's neither
21 here nor there.

22 In any event, let me have the last

1 question back so I can figure out what my last train
2 of thought is.

3 (Whereupon the requested
4 portion was then read back by
5 the Reporter.)

6 MS. HIGHTMAN:

7 Q. Would it be correct to summarize your
8 position in this case on the issue of the appropriate
9 rate to be paid for intercarrier compensation for
10 calls terminated to internet to be that you believe
11 all facilities extending from Focal's switch to its
12 customers are loops which may or may not be long
13 loops as you use the phrase long loops?

14 A. Could you say from where to where again?

15 Q. From Focal's switch to its customers.

16 A. I believe that that's more akin to what
17 would be characterized as a local loop as opposed to
18 transport.

19 Q. I guess first I am asking you is that
20 your position that you believe that the facility
21 extending from Focal's switch to its customers are
22 loops, is that your position in this case?

1 A. Well, and when you say loops and you use
2 it in the FCC's definition as applied to voice
3 traffic, you are saying from the main distribution
4 frame to the network interface device. And in this
5 instance it is a little bit different because you are
6 talking about ISP traffic. And I believe that the
7 facility used to connect Focal's end users with the
8 switch would be more akin to the local loop.

9 Q. Okay. Have you reviewed Mr. Starkey's
10 supplemental verified statement in this case and in
11 particular page 14 where he provides a diagram?

12 A. Fourteen?

13 Q. Yeah.

14 A. Yes, I have. I have reviewed this.

15 Q. There is a diagram but there is also a
16 textual discussion, I believe, before and after the
17 diagram. Have you reviewed the text, too?

18 A. I have read it, yes.

19 Q. Are you aware of the fact that
20 Mr. Starkey has indicated that at portion of Focal's
21 facilities are transport facilities, not loop
22 facilities, as the FCC defines that term?

1 MR. HARVEY: I will have to ask for some
2 clarification here. If she is asking whether he's
3 aware of what Mr. Starkey said, I guess he can answer
4 that.

5 MS. HIGHTMAN: That's what I asked.

6 MR. HARVEY: Okay. Fair enough.

7 THE WITNESS: Could you point me to exactly
8 where Mr. Starkey says that?

9 MS. HIGHTMAN:

10 Q. Well, I think you can look at the
11 picture, the diagram on page 14. We can go to the
12 text, too, but the diagram says it as well.

13 A. I believe what Mr. Starkey is saying and
14 my understanding of his statement is that, for
15 example, in the situation of a collocated ISP, that
16 they use OC-48 which is generally identified as
17 transport facilities to route that traffic to their
18 collocated ISPs. I guess you could -- since he
19 believes that that's transport facilities, they
20 are -- they should recover the transport rate for
21 those facilities. Whereas if it's compared to a
22 traditional local loop for voice calls, that type of

1 transport would be recovered through the local loop
2 from the end user.

3 Q. But the transport facilities that you
4 were just describing with regard to a collocated
5 Focal ISP are not cost recovered from the ISP local
6 rates, right?

7 A. Through Ameritech's local rates is what
8 you are saying?

9 Q. No, no, through Focal's local rates,
10 right?

11 A. I don't know about that. I don't know
12 what Focal recovers through their local rates.

13 Q. Were you assuming when you prepared your
14 testimony that the transport facilities associated
15 with service to a collocated Focal ISP are recovered
16 by Focal through rates it charges the ISP?

17 A. Well, I wasn't assuming that. What I
18 was saying is, just because something is labeled as
19 transport facility, doesn't mean it's automatically
20 entitled to recover transport costs for the traffic
21 that goes over those facilities.

22 Q. Right. But you haven't answered my

1 question.

2 A. No, I wasn't assuming that.

3 Q. So you don't know whether Focal recovers
4 those costs from the internet service provider, those
5 costs being the costs of the transport we just
6 described?

7 A. I am not aware of that but I would
8 believe that would be a portion that could be
9 justified to completely recovered from the ISP.

10 Q. Have you reviewed Focal's testimony in
11 this case other than Mr. Starkey's?

12 A. I concentrate on Issue 2.

13 Q. Well, with regard to this issue has
14 Focal indicated to your knowledge that the costs that
15 it believes should be recovered through intercarrier
16 compensation are now being recovered through rates it
17 charges its internet service providers directly?

18 A. I'm not aware of what costs they recover
19 from their ISPs, specific to what you are talking
20 about, no.

21 Q. Now, isn't it correct that a majority of
22 Focal's transport is provided on fiber optic

1 facilities?

2 A. I believe so.

3 Q. In fact, if we look at the -- we are
4 back on Mr. Starkey's page 14 of his supplemental
5 verified statement, the diagram, what is identified
6 on this diagram as Focal transport by dotted lines?

7 A. Yes.

8 Q. Isn't it your understanding that those
9 transport facilities are fiber optic facilities?

10 A. According to Mr. Starkey's diagram that
11 appears to be so.

12 Q. Well, do you have any reason to dispute
13 it?

14 A. I have no reason to dispute the diagram.

15 Q. And in fact, isn't it true or do you
16 know, whether Focal obtains these transport
17 facilities from carriers such as TCG?

18 A. According to the diagram it says that
19 it's Focal leased. I'm not sure where they get them
20 from.

21 Q. Would you agree with me that if there
22 are fiber optic transport facilities that extend from

1 Focal's rate, that Focal would qualify for the tandem
2 rate under the FCC's discussion in Paragraph 1090 of
3 the First Report and Order?

4 MR. HARVEY: I will have to object. Fiber
5 optic transport facilities extending from Focal's
6 switch to where?

7 MS. HIGHTMAN:

8 Q. If the facilities shown on Mr. Starkey's
9 diagram that we have been looking at -- and you have
10 got it there?

11 A. Yes.

12 Q. If all the transport facilities which
13 are the dotted lines that are shown on here that stem
14 from Focal's switch and go to Ameritech's central
15 offices or to the SONET node, if those are in fact
16 all fiber optic transport facilities, would you agree
17 that Focal would qualify for the tandem rate
18 according to the language of Paragraph 1090 of the
19 FCC'S First Report and Order?

20 MR. FRIEDMAN: Objection, ambiguity for the
21 following reason. It's clear from the testimony of
22 the last few minutes that the word "transport" as the

1 witness understands it can be used in two ways, one
2 being the way the FCC uses it to talk about a piece
3 of evidence which can be recovered through reciprocal
4 compensation and one the method the witnesses talk
5 about labeled transport which may or may not fall
6 into that category. I think you need to be clear in
7 which of those two different meanings you use the
8 word "transport."

9 MS. HIGHTMAN: I think the witness can
10 answer the question. I don't need to be rephrasing
11 the question just to satisfy Ameritech's attorney.
12 His attorney hasn't objected.

13 MR. FRIEDMAN: I think you do in this
14 instance because the record is so clear that the word
15 can be used with these two different meanings that,
16 if you are not clear, I have no guarantee that the
17 witness is understanding the same way you mean it
18 when he answers.

19 MS. HIGHTMAN: If he doesn't understand it,
20 he can explain it in his answer.

21 EXAMINER WOODS: I don't think the problem
22 is that -- I don't think we will know what he

1 understands by looking at his answer. I think he can
2 understand perfectly but we don't know how he is
3 using the terms.

4 MS. HIGHTMAN: Well, maybe I will ask him to
5 explain it when he gives the answer.

6 Q. Why don't you do that? When you
7 answer the question, explain what you mean by
8 transport.

9 A. Well, I think the question was in a
10 sense do all the dotted lines qualify, I'm sorry, the
11 dotted lines on Mr. Starkey's diagram which he
12 represents as Focal transport, does that qualify
13 Focal to receive the tandem rate? Is that the
14 question?

15 Q. Yes.

16 EXAMINER WOODS: If it's all fiber optic.

17 MS. HIGHTMAN: Oh, thank you.

18 THE WITNESS: A. No, I would not agree with
19 that.

20 MS. HIGHTMAN:

21 Q. And the reason being?

22 A. I just -- first of all, I don't think

1 that all the dotted lines on the diagram represent
2 transport in the FCC's definition. And that's where
3 my disagreement lies. I don't believe that in my
4 opinion that that would be indicative of what the FCC
5 was alluding to.

6 Q. Now, if we look at the diagram again.

7 A. Yes.

8 Q. These facilities, the transport
9 facilities, that are shown as the dotted lines...

10 A. Yes.

11 Q. ..Do not terminate at the customer
12 premises, do they?

13 A. What customer premises are you talking
14 about?

15 Q. Any of them. They terminate at either
16 Ameritech's central offices or at Focal's SONET node,
17 right, as they come from the Focal switch?

18 A. Except for the dotted line that ends at
19 the Focal ISP and the collocated switch, I'm sorry,
20 for the collocated ISPs.

21 Q. Putting that aside.

22 A. Without that?

1 Q. Yes. Would you agree?

2 A. If we remove that one, I would agree
3 that the dotted lines in the diagram either end at
4 the Ameritech CO or Ameritech end offices or the
5 SONET node.

6 Q. So they wouldn't technically be loops as
7 the FCC has defined that term, isn't that right,
8 because they don't end at a network interface device
9 at a customer's premises?

10 A. Well, I think I would --

11 Q. Can you answer that questions?

12 A. I'm sorry, could you repeat the
13 question?

14 Q. So those transport facilities that we
15 have been talking about other than the one to the
16 collocated ISP are not loops as the FCC has defined
17 that term because they do not terminate at a NID in a
18 customers premises, right?

19 A. Well, I would agree with you as far as
20 the dotted lines that are connected with Ameritech's
21 end offices.

22 Q. Are you aware of the fact that where the

1 transport facility begins at the Ameritech CO on
2 this, and there is several of them, several transport
3 facilities are shown on here, where they start, one
4 of them is at the end of the Ameritech CO, do you see
5 where I am at?

6 A. Yes, generally.

7 Q. Is it your understanding that that's
8 where Ameritech hands-off its traffic, the traffic to
9 Focal?

10 A. I believe in certain instances that they
11 do.

12 Q. Isn't that true with regard to all these
13 COs that are shown on the diagram?

14 A. Well, all of these COs on the diagram,
15 yes.

16 Q. And wouldn't you also agree that these
17 facilities, the transport facilities on this diagram,
18 begin and end at, except for the one for the Focal
19 collocated ISP -- we will put that aside for this
20 question -- begin and end at the Ameritech CO and the
21 Focal switch respectively?

22 A. With the exception of the SONET node.

1 Q. Okay. And would you agree that the
2 function of these facilities, the dotted line
3 facilities, is to aggregate traffic brought in from
4 the Ameritech central office to the Focal switch?

5 A. I don't believe that it's necessarily to
6 aggregate the traffic. I think it transports the
7 traffic.

8 Q. It brings the traffic from the CO to the
9 Focal switch, right?

10 A. It transports the traffic from
11 Ameritech's CO to the Focal switch.

12 Q. Would you agree with me that the FCC has
13 recognized in Paragraph 1090 that there is a trade
14 off between a hierarchical switching network and
15 transport?

16 MR. HARVEY: I guess I will have to renew my
17 objection. What the -- Paragraph 1090 says what it
18 says.

19 MS. HIGHTMAN: I am not asking if it says
20 those words. I am asking what the gist of it is
21 because he is interpreting this to come up with his
22 position.

1 EXAMINER WOODS: That's what I understood
2 the question to be.

3 MR. HARVEY: Fair enough.

4 MS. HIGHTMAN: Could you read it back,
5 please?

6 (Whereupon the requested
7 portion was then read back by
8 the Reporter.)

9 THE WITNESS: A. Well, I personally don't
10 see anything about a hierarchical switch structure
11 mentioned in there, but my understanding of 1090 says
12 that, to the extent that a CLEC would use new
13 technologies where they serve a geographical area
14 compared to the one served by the ILEC, that they
15 could possibly qualify for the tandem rate.

16 MS. HIGHTMAN:

17 Q. Would you agree that Mr. Starkey's
18 diagram indicates that Focal has leased extensive
19 fiber optic facilities?

20 MR. FRIEDMAN: Objection. The diagram shows
21 what it shows and Mr. Starkey says what he says, and
22 it makes little difference what this witness might

1 have to say about what it seems to depict.

2 MS. HIGHTMAN: He is reaching a conclusion
3 regarding what the FCC's language requires. He is
4 interpreting the FCC's rules.

5 EXAMINER WOODS: Right.

6 MR. HARVEY: I join in the objection. She
7 is just asking him to interpret the diagram, or not
8 even interpret, recite what the diagram --

9 MS. HIGHTMAN: No, he's not.

10 EXAMINER WOODS: Okay, Ms. Hightman, my only
11 question is what is the relevance of whether or not
12 Focal has an extensive fiber optic system in place if
13 that is his testimony?

14 MS. HIGHTMAN: Because he is saying we do
15 not qualify under 1090 for the tandem rate. What
16 1090 says is that states shall consider whether new
17 technologies, for example, specifically fiber rings
18 or wireless networks, which is not relevant here,
19 perform functions similar to those performed by the
20 ILEC's tandem switch.

21 EXAMINER WOODS: What difference does it
22 make whether Focal has one foot of fiber optics in

1 the ground or one hundred miles as far as the
2 application of 1090. It seems to me if they are
3 utilizing the technology, then an argument can be
4 made that they should qualify. But I am at a loss to
5 understand why how much they have is an issue.

6 MS. HIGHTMAN: Well, I don't know if I
7 disagree with you on that. But I'm not sure he
8 agrees with us on that and that's why I am probing
9 his --

10 EXAMINER WOODS: That doesn't solve my
11 question about relevance. What difference does it
12 make -- if you can explain to me what difference it
13 makes how much fiber there is, then I can at least
14 consider allowing this line of questioning. What
15 difference does it make?

16 MS. HIGHTMAN: I don't think it makes a
17 difference but I think Staff thinks it makes a
18 difference.

19 EXAMINER WOODS: Why don't you ask him that,
20 whether or not he thinks there is a lot in the
21 ground, would it make a difference to him if they had
22 a lot or a little?

1 MS. HIGHTMAN:

2 Q. Can you answer that question?

3 A. Well, I think admittedly that would be
4 my opinion but --

5 Q. What would be your opinion?

6 A. Whether a little or a lot matters.

7 EXAMINER SHOWTIS: Does it?

8 MS. HIGHTMAN:

9 Q. You are saying it matters if there is
10 more?

11 A. Well, for example, Mr. Starkey described
12 an intra-office fiber ring, and I don't believe in my
13 opinion that that would be what the FCC was referring
14 to when it was describing these new technologies.

15 Q. But does the amount of fiber that's part
16 of the Focal network in your mind play into the
17 decision as to whether they qualify for the tandem
18 rate?

19 A. I think it depends on what the fiber is
20 used for.

21 Q. And in fact isn't what Mr. -- what we
22 have been discussing for the most part as far as the

1 dotted lines on Mr. Starkey's diagram are the
2 interoffice facilities, not the intra-office
3 facilities that you just mentioned?

4 A. That's true.

5 Q. Referring to your Attachment 1?

6 A. Yes.

7 Q. I want to look at what you have got on
8 your Attachment 1 and in a sense compare it with what
9 Mr. Starkey shows on his diagram that we have been
10 looking at. Looking at what you identify as Facility
11 A on your Attachment 1?

12 A. Yes.

13 Q. Isn't it true that, according to Focal's
14 description of its network as presented in this case,
15 that what you show as Facility A might very well
16 travel to an Ameritech central office or the
17 equivalent, and is actually -- well, first let me ask
18 that. Is that true?

19 A. I guess that's possible.

20 Q. And, in fact, if it does, it is actually
21 comprised of two different facilities, a transport
22 facility and a local distribution channel?

1 A. Assuming that that would be equivalent
2 to the Ameritech CO, I think that's right.

3 Q. And isn't that what's depicted, if you
4 can answer this question, look back to Mr. Starkey's
5 diagram, as the Focal customer, ISP customers, served
6 from Ameritech's Central Office E on the right side
7 of the diagram?

8 MR. HARVEY: I will have to object to that.
9 I don't think that Mr. Phipps can tell us what
10 Mr. Starkey was thinking when he prepared this
11 diagram.

12 MS. HIGHTMAN: The question is I am trying
13 to understand what he understands Focal's network to
14 be made of or to be comprised of. And he has talked
15 about loops versus transport. We have gone through
16 extensive questioning on that. That's a significant
17 issue in the determination of the rate for
18 intercarrier compensation. If he doesn't know, he
19 doesn't know. But I am entitled to ask him about it,
20 whether he has reviewed this and what his
21 understanding is.

22 MR. HARVEY: Well, to that extent it's